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is, that it involves an outrage on public decency and morals, and creates a public scandal, by prostitution of a solemn ceremony which the law allows to be applied only to a legitimate union, to a marriage at best but colorable and fictitious, and which may be made, and too often is made, the means of the most cruel and wicked deception."

CRIMES—GRAND JURY—TIME FOR OBJECTING TO JURORS DISQUALIFIED.—A state statute required that a juror be a person "not charged with any crime," etc. The defendant, convicted of murder and sentenced to be hanged, moved to quash the indictment on the ground that one of the members of the grand jury which found it was disqualified, being charged at the time with the commission of a crime. *Held*, the indictment must be quashed. *State v. Butler* (La., 1922), 90 So. 395.

According to 1 CHITTY, CRIMINAL LAW, 307, "It is perfectly clear that all persons serving upon the grand jury must be good and lawful men; by which it is intended that they must be liege subjects of the King, and neither aliens, nor persons outlawed even in a civil action, attainted of any treason or felony, or convicted of any species of *crimen falsi*, as conspiracy or perjury, which may render them infamous." If one of the grand jurors presenting an indictment was disqualified the indictment was held void, provided that the objection was raised before trial. After trial objections could be made only when the disqualification could be proved by the records of the court trying the case. See 2 HAWKINS P. C., ch. 25, sec. 26, Stat. 11, Henry IV; *United States v. Gale*, 109 U. S. 65. At the present time statutes ordinarily prescribe the qualifications necessary for grand jury service. See Iowa, Compiled Code 1919, § 6989, § 9303; Michigan, Compiled Laws 1915, § 12190, § 15708. Not infrequently they also provide as to when and how objections to parties disqualified must be made. See Iowa, Compiled Code 1919, § 9301, § 9303; Alabama, Code 1907, § 7572; 1909, p. 315, § 23. In the absence of statute, various rules have been adopted. In general, the defendant must take advantage of the first opportunity to object to disqualified jurors, and this may be by challenge, or by plea in abatement, or by motion to quash. See 2 KERR, WHARTON'S CRIMINAL PROCEDURE (Ed. 10), § 1277, § 1278; 2 BISHOP'S NEW CRIMINAL PROCEDURE, § 876, § 763, § 884. The great majority of American courts hold that pleading to the merits waives objections to grand jurors disqualified. *United States v. Gale*, *supra*; *State v. Carver*, 49 Me. 588; *State v. McGee*, 36 La. Ann. 206. See also *State v. Bush*, 117 La. 463. In *United States v. Gale*, *supra*, the court pointed out that allowing objections to the indictment to be raised after trial because of the disqualification of members of the grand jury would be "trifling with justice, and would render criminal proceedings a farce." A few courts, however, have allowed such objections even after trial. *Doyle v. State*, 17 Ohio 222.

CRIMES—HOMICIDE—RIGHT TO KILL TO EJECT TRESPASSER.—A dispute arose between deceased and defendant on defendant's land and defendant killed deceased. Defendant excepted to the refusal of the court to give the

following instruction: "A man upon his own premises when attacked is under no duty to retreat but may resist the aggressor and in so doing may use such force as appears to him as a prudent man as reasonably necessary to repel the attack and to subdue the aggressor or compel him to leave the premises." *Held*, the rejection of the instruction was proper, as the rule that necessary force may be used to protect property is modified by the rule that no one can endanger human life in defending property except in extreme cases, and that the taking of human life is not justified merely to subdue the intruder or compel him to leave the premises. *Fortune v. Commonwealth* (Va., 1922), 112 S. E. 861.

"Life is too valuable to be sacrificed for the protection of property. Rather than slay the aggressor to prevent a mere trespass, he [the land owner] should yield and appeal to the courts for redress." *Carpenter v. State*, 62 Ark. 286. A man may not kill to get rid of a persistent, noisy trespasser. *State v. Horskin*, Delaware Crim. Rep. (Houston) 116; *Patten v. People*, 18 Mich. 313. If a man kicks an intruder to eject him and death ensues, he is guilty of homicide. *Wild's Case*, 2 Lewin's Cr. Cases, 214. The rule applies to personal as well as real property. *People v. Capello*, 282 Ill. 542; *Stacey v. Commonwealth*, 189 Ky. 402. But some deaths resulting from attempts to protect property are justifiable. A man may defend his property with any necessary force short of taking life or doing great bodily harm. *Roach v. The People*, 77 Ill. 25; *Commonwealth v. Power*, 7 Metc. (Mass.) 596; *State v. Johnson*, 12 Ala. 840; *Burnham v. Stone*, 101 Cal. 164. His duty to retreat to the last ditch does not extend to his own land. *Brinkley v. State*, 89 Ala. 34. He there has a right to stand his ground, though there is a less dangerous alternative. *Estep v. Commonwealth*, 86 Ky. 39. It therefore may result that because a defendant has endangered his own life through milder attempts at expulsion he is forced to kill in self-defense or because he has reasonable grounds to believe his life is in danger. In such cases he is exonerated. *Alberty v. United States*, 162 U. S. 499. It is a corollary that under such circumstances as these he is justified in using deadly weapons and is not liable to punishment for offenses of a lower grade than murder. *People v. Dann*, 53 Mich. 490; *State v. Taylor*, 82 N. C. 554. If any other felony besides his own death is threatened he is justified in killing to prevent it unless there is a more peaceful alternative. *McPherson v. State*, 22 Ga. 478. As the instruction asked for failed to state that a felony or self-defense was involved, the court's action was clearly right on principle and authority.

CRIMES—HOMICIDE—SELF-DEFENSE—DUTY TO RETREAT.—Defendant was indicted for murder, and at the trial it appeared that he and deceased were playing cards in a room in the Elks' Club, of which the defendant was a member. The parties became involved in a personal difficulty and the deceased struck defendant with a chair and was in the act of striking him again when defendant fired the fatal shot. *Held*, that defendant was not bound to retreat when attacked in a room of the club of which he was a member. *State v. Marlowe* (S. C., 1922), 112 S. E. 921.